

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Randy Duquette

v.

Civil No. 04-cv-281-SM

Les Dolecal, Commissioner, et al.

O R D E R

Plaintiff moves to compel discovery as to specifically identified requests for production and interrogatories. They are considered in order.

Request nos. 1 & 2 - certified copy of each version of the Sex Offender Program curriculum over the last ten years, including any "alternative" SOP.

Defendants have produced the current curriculum and the prior version was introduced into evidence at the preliminary injunction hearing. In the defendants' objection to the motion defendants state that they do not have copies of any other version of the curriculum used during the last ten years. A party is not required to create a document in response to a request nor can a party be ordered to produce that which it does not have. Defendants have otherwise complied. Denied.

Request nos. 5 & 6 - Department of Corrections budgets for the SOP for the last ten years, specifying state and federal money.

Defendants have admitted that the SOP is a state-sponsored,

state-funded program and that admission satisfies that element of plaintiff's cause of action. The requests are unnecessary and over broad. Denied.

Request no. 7 - form notices where SOP participants were notified or given the option for an alternative SOP prior to March 28, 2005.

Defendants are ordered to provide all such copies for the period prior to March 28, 2005 with names redacted. Defense counsel shall collect copies of the unredacted ones for in camera review if necessary. If there are no such documents prior to March 28, 2005, defense counsel is to provide plaintiff with a written admission to that effect. Granted in part.

Request no. 8 - current SOP curriculum.

This is covered by request no. 1.

Interrogatory no. 4 - Is SOP funded by state or federal money.

Defendants are ordered to answer. Granted.

Interrogatory no. 5 - how long have defendants been aware that state sponsored religious, 12-step and/or higher power programs are unconstitutional?

Defendants are ordered to answer as it bears on the question of willfulness of any violation. Granted.

SO ORDERED.

James R. Muirhead
United States Magistrate Judge

Date: June 23, 2005

cc: Randy J. Duquette
Mary E. Maloney, Esq.